

Application Number 09/848,483
Amendment dated January 6, 2004
Responsive to Office Action of October 6, 2003

REMARKS

This amendment is responsive to the Office Action dated October 6, 2003. Applicants have amended claim 48 and canceled claim 49. Claims 1-48 and 50-51 are now pending.

Rejections for Obviousness-type Double Patenting:

The Examiner rejected claims 1-4, 9, 10, 18, 19, 25-27, 29, 30, and 38-45 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 6-8, 11-29, and 32-42 of copending Application No. 09/848,458.

Applicants note the provisional status of this rejection. Applicants will address this issue if and when the rejection is formally applied.

Claim Rejections Under 35 U.S.C. § 112

In the Office Action, the Examiner rejected claims 5-8, 11-15, 20-22, 28, 31-34, 37, and 47-51 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. In particular, the Examiner indicated that the phrase "hook-like" renders the claims indefinite because the claims include elements not actually disclosed, thereby rendering the scope of the claims unascertainable. Applicants respectfully traverse this rejection.

The phrase "hook-like" does not render the scope of the claims unascertainable. The application is replete with discussion and illustrations of hook-like elements. Clear examples of hook-like elements are illustrated in FIGS. 5 and 6, specifically labeled as hook-like elements 63A-63L. A person with skill in the art would have no trouble ascertaining the meaning of the phrase "hook-like," particularly in view of the discussion and illustrations in the application.

Moreover, the Federal Circuit has long established that a patentee is free to be his own lexicographer.¹ In the instant case, the Examiner appears to be making semantic instructions to Applicants to refer to elements of Applicants' invention as something other than "hook-like elements," as currently claimed and clearly described and illustrated in the specification. Again, the patentee is free to define the terms which convey the invention and free to be his own lexicographer.

¹ *Markman v. Westview Instruments, Inc.* 34 USPQ2d 1321 (CAFC 1995)(in banc), *arr'd* 517 U.S. 370 (1996)

Application Number 09/848,483
Amendment dated January 6, 2004
Responsive to Office Action of October 6, 2003

There is simply nothing indefinite about the phrase "hook-like." The instant case is a classic example of Applicants defining a phrase, "hook-like element" to describe the subject matter so that its scope would be understood by persons in the field of the invention. Applicants courteously request withdrawal of all rejections under 35 U.S.C. § 112, second paragraph.

As a final point, Applicants note that notwithstanding the rejections under 35 U.S.C. § 112, second paragraph, the Examiner appears to have had no trouble interpreting the meaning of claims which include the phrase "hook-like element." Applicants feel that the current rejections under 35 U.S.C. § 112, second paragraph, are directed at the scope of the pending claims rather than any indefiniteness therein, which is improper.

Again, Applicants courteously request withdrawal of all rejections under 35 U.S.C. § 112, second paragraph. Applicants also courteously solicit favorable remarks from the Examiner regarding claims 5-8, 11-15, 20-22, 28, 31-34, and 37. With regard to those claims, the Examiner indicated that they would include allowable subject matter if the rejections under 35 U.S.C. § 112, second paragraph, were overcome.

Claim Rejections Under 35 U.S.C. § 102 and § 103

In the Office Action, the Examiner rejected claims 1-4, 9, 10, 18, 19, 25-27, 29, 30, 38, and 45 under 35 U.S.C. 102(b) as being anticipated by Walser et al. (US 4,423,294) and rejected claims 39-44 under 35 U.S.C. 103(a) as being unpatentable over Walser. The Examiner also rejected claims 46-51 under 35 U.S.C. 102(e) as being anticipated by Galkiewicz (WO 01/58302 A1).

With regard to the rejections of claims 1-4, 9, 10, 18, 19, 25-27, 29, 30, 38, and 45 Applicants respectfully traverse the rejections. Walser fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C. 102(b), and provides no teaching that would have suggested the desirability of modification to include such features.

Each of independent claims 1, 18, and 29 recites a bottom layer defining holes for aligning with spring elements, and a top layer engaged with the bottom layer and biased away from the bottom layer upon protrusion of the spring elements through the holes in the bottom layer. These features are not shown in Walser.

Application Number 09/848,483
Amendment dated January 6, 2004
Responsive to Office Action of October 6, 2003

In particular, Walser does not disclose or suggest spring elements that protrude through the holes in the bottom layer, as recited in claims 1, 18 and 29. Moreover, Walser does not disclose or suggest a top layer biased away from the bottom layer upon protrusion of the spring elements through the holes in the bottom layer, as recited in claims 1, 18 and 29.

In rejecting claims 1, 18 and 29, the Examiner referred specifically to FIG. 1 of Walser. The Examiner indicated that Walser shows spring elements 134, a bottom layer 126 including holes 128 for aligning with spring elements 134, and a top layer 132 engaged with bottom layer 126 and biased away from bottom layer 126 upon protrusion of spring elements 136 through holes 128 of bottom layer 126.

Applicants respectfully submit that the Examiner has misconstrued Walser. First, as illustrated in Walser, top layer 132 is not engaged with bottom layer 126. Instead, top layer 132 appears to simply rest on bottom layer 126 without any engagement as recited in Applicants' claims. Second, as illustrated in Walser, spring elements 128 do not protrude through holes 128 in the bottom layer 126. This can be most clearly seen in FIG. 2 of Walser. As illustrated in Walser, spring elements 134 protrude away from holes 128 rather than through the holes, as recited in Applicant's claims.

Third, top layer 132 of Walser is not biased away from bottom layer 126 upon protrusion of the spring elements through the holes in the bottom layer. Again, spring elements 134 of Walser protrude away from holes 128 rather than through the holes. Clearly, top layer top layer 132 is not biased away from bottom layer 126 upon protrusion of the spring elements through the holes in the bottom layer as recited in claims 1, 18 and 29.

For at least the reasons set forth above, claims 1, 18 and 29 are novel and non-obvious over Walser. The respective dependent claims 2-17, 19-28, and 30-45 are therefore, likewise, novel and non-obvious over Walser.

Applicants in no way acquiesce to any of the Examiner's characterizations of Walser with respect to Applicants' dependent claims and reserve the right to identify additional differences between Applicants' claims and Walser or any other prior art reference, should a need arise.

With regard to claims 46-51, Applicants traverse the Examiners rejections to the extent such rejections are still considered applicable to the amended claims. In the Office Action, the Examiner rejected claims 46-51 under 35 U.S.C. 102(e) as being anticipated by Galkiewicz.

Application Number 09/848,483
Amendment dated January 6, 2004
Responsive to Office Action of October 6, 2003

Applicants' have amended claim 48 to include the limitations formerly recited in claim 49, and have canceled claim 49.

Each of independent claims 46 and 48 specifically recite that a distance of travel is defined between the first and second layers when the layers are engaged. This is not disclosed in Galkiewicz.

In Galkiewicz, it appears that upon engagement the location of the top layer is fixed relative to the bottom layer. Nothing described in Galkiewicz would appear to suggest otherwise. In contrast, Applicants' claims 46 and 48 specifically recite that a distance of travel is defined between the first and second layers when the layers are engaged. In other words, when the top and bottom layers are engaged, the features of Applicants claims would allow the top layer to move relative to the bottom layer (or vice versa), yet remain engaged.

In rejecting original claim 49, the Examiner pointed to FIGS. 3A-3D of Galkiewicz. However, of those FIGS., only FIG. 3D illustrates a top and bottom layer that are engaged as recited in Applicants' claims. In FIGS. 3A-3C, the top and bottom layers are not engaged to attach the top layer to the bottom layer.

Claim 50 further recites that the distance of travel is in the range of 0.05 centimeters to 1 centimeter.

Even if the Examiner can assert that the slight amount of clearance shown in FIG. 3D could fairly be interpreted as defining a distance of travel between the top and bottom layers when the layers are engaged (as recited in claims 46 and 48), there is clearly nothing in Galkiewicz to suggest that this distance of travel falls within the distance range recited in claim 50. Absent a teaching or suggestion in the prior art that the distance of travel between engaged top and bottom layers is in the range of 0.05 centimeters to 1 centimeter, claim 50 should be allowed.

In rejecting claim 50, the Examiner indicated that items 42 and 40 of FIG. 2A of Galkiewicz are suggestive of the distance of travel. Applicants' respectfully submit, however, that items 42 and 40 do not necessarily define any amount of travel when the layers are engaged, much less a distance of travel within the range of 0.05 centimeters to 1 centimeter. In Galkiewicz, when the top and bottom layers are engaged, the hook-like elements of the top layer

Application Number 09/848,483
Amendment dated January 6, 2004
Responsive to Office Action of October 6, 2003

would appear to abut the bottom layer (or vice versa) such that no distance travel is defined.

FIG. 4D appears to show this very clearly.

Again, even if the Examiner can assert that the slight amount of clearance illustrated in FIG. 3D could fairly be interpreted as defining a distance of travel between the top and bottom layers when the layers are engaged (as recited in claims 46 and 48), there is still nothing in Galkiewicz to suggest that this distance of travel falls within the distance range recited in claim 50.

Claim 51 further recites a spring element biasing the first and second layers away from one another. In rejecting claim 51, the Examiner cited FIGS. 3C and 3B of Galkiewicz and indicated that item 15 is a spring. However, even if item 15 could be interpreted as a spring element, it clearly does not bias the top layer away from the bottom layer when the layers are engaged, as recited in Applicants' claims.

Independent claim 48 recites that the hook-like elements of the top and bottom layer are engaged, thereby attaching the first layer to the second layer. Interestingly, FIGS. 3C and 3B cited by the Examiner in rejecting dependent claim 51 do not even illustrate top and bottom layers that are engaged. Only FIG. 3D of Galkiewicz illustrates such engagement. Clearly, nothing in FIG. 3D or any other passage of Galkiewicz discloses or suggests a spring element biasing the first and second layers away from one another, as recited in claim 51.


CONCLUSION

Applicants believe that all claims in this application are in condition for allowance. Applicants respectfully request reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

Jan. 6, 2004
SHUMAKER & SIEFFERT, P.A.
8425 Seasons Parkway, Suite 105
St. Paul, Minnesota 55125
Telephone: 651.735.1100
Facsimile: 651.735.1102

By:


Name: Kelly Patrick Fitzgerald
Reg. No.: 46,326